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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/062,714 04/20/98 ROTHMAN

N 205950

EXAMINER

QM12/1013

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ART UNIT

PAPER NUMBER

3764

DATE MAILED:

10/13/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/062,714**

Applicant(s)  
**Neil S. Rothman et al.**

Examiner  
**Benjamin Koo**

Group Art Unit  
**3764**



☒ Responsive to communication(s) filed on Jul 13, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 6-9 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 6-9 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3764

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 6-9 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no mention in the specification of the term "band" or "bands" which are an essential component of the applicant's invention, claims will be interpreted as best understood by the Examiner.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

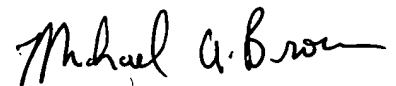
Art Unit: 3764

4. Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Halperin et al. '674 in view of Huxley III, et al. '955. Halperin et al. shows a belt (10), a bladder (12) inherently having top and bottom panels but does not mention the removability of the bladder, the material choice, the specific size and the band(s). It would have been obvious to have featured removability, because such a limitation is old and well-known. Removability allows the user to change the bladders between usages for use on other patients, for the sake of hygiene and sterileness, where the belt itself may be reused. Furthermore, it has been held that the mere fact that a given structure is integral does not preclude its consisting of various elements. Nerwin v. Erlichman, 168 USPQ 177, 179 (PTO Bd. of Int. 1969). It would have been obvious to use nylon because such a material choice would be considered an obvious art-recognized alternative material, known in the art. Huxley III, et al. shows a "band" (44) attached to the top panel (36) having an opening (via 46) to receive a belt (17). It would have been obvious to have used a "band" configuration, because such a configuration would be considered an obvious means of attachment in the art. Whether one uses loops, velcro, or tape, variations in attachment between two known elements are considered obvious.

5. Any inquiry concerning the specifics of this communication should be directed to Examiner Ben Koo who can be reached at 703-308-2657.

bk

October 11, 1999



Michael A. Brown  
Primary Examiner